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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 AMERICAN INTERNATIONAL) Case No. 07cv2377-JLS (BLM)
12 SPECIALTY LINES INSURANCE)
13 COMPANY,) **ORDER SETTING SETTLEMENT**
14) **CONFERENCE**
15 Plaintiff,)
16 v.)
17 HEILIG-MEYERS COMPANY, et al.,)
18 Defendants.)
19 _____)

20 On September 17, 2008, the Court convened a Mandatory Settlement
21 Conference in the above matter. The case did not settle at the
22 conference. However, after conferring with counsel and the parties, the
23 Court finds it appropriate to schedule a second Settlement Conference
24 for **January 28, 2009** at **9:30 a.m.**, in the chambers of Magistrate Judge
25 Barbara L. Major located at **940 Front Street, Suite 5140, San Diego, CA**
26 **92101**. All discussions at the Settlement Conference will be informal,
27 off the record, privileged, and confidential. Counsel for any non-
28 English speaking party is responsible for arranging for the appearance
of an interpreter at the conference.

a. **Personal Appearance of Parties Required:** All parties,
adjusters for insured defendants, and other representatives of a party

1 having full and complete authority to enter into a binding settlement,
 2 as well as the principal attorneys responsible for the litigation, must
 3 be present in person and legally and factually prepared to discuss
 4 settlement of the case. Counsel appearing without their clients
 5 (whether or not counsel has been given settlement authority) will be
 6 cause for immediate imposition of sanctions and may also result in the
 7 immediate termination of the conference.

8 Unless there are extraordinary circumstances, persons required to
 9 attend the conference pursuant to this Order shall not be excused from
 10 personal attendance. **Requests for excuse from attendance for**
 11 **extraordinary circumstances shall be made in writing at least three (3)**
 12 **court days prior to the conference.** Failure to appear in person at the
 13 Mandatory Settlement Conference will be grounds for sanctions.

14 b. **Full Settlement Authority Required:** In addition to counsel
 15 who will try the case, a party or party representative with full
 16 settlement authority¹ must be present for the conference. In the case
 17 of a corporate entity, an authorized representative of the corporation
 18 who is not retained outside counsel must be present and must have
 19 discretionary authority to commit the company to pay an amount up to the
 20 amount of the Plaintiff's prayer (excluding punitive damages prayers).

21
 22 ¹ "Full settlement authority" means that the individuals at the settlement
 23 conference must be authorized to explore settlement options fully and to agree at that
 24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
 25 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
 26 discretion and authority" to change the settlement position of a party. Pitman v.
 27 Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
 28 a person with unlimited settlement authority to attend the conference contemplates that
 the person's view of the case may be altered during the face to face conference. Id.
 at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 The purpose of this requirement is to have representatives present who
2 can settle the case during the course of the conference without
3 consulting a superior.

4 c. **Confidential Settlement Statements Required:** No later than
5 **January 21, 2008**, the parties shall submit directly to Magistrate Judge
6 Major's chambers confidential settlement statements no more than five
7 (5) pages in length. **These confidential statements shall not be filed**
8 **or served on opposing counsel.** Each party's confidential statement must
9 include the following:

10 (i) A brief description of the case, the claims and/or
11 counterclaims asserted, and the applicable defenses or position
12 regarding the asserted claims;

13 (ii) A specific and current demand or offer for settlement
14 addressing all relief or remedies sought. If a specific demand or offer
15 for settlement cannot be made at the time the brief is submitted, then
16 the reasons therefore must be stated along with a statement as to when
17 the party will be in a position to state a demand or make an offer; and

18 (iii) A brief description of any previous settlement
19 negotiations, mediation sessions, or mediation efforts.

20 General statements that a party will "negotiate in good faith" is
21 not a specific demand or offer contemplated by this Order. It is
22 assumed that all parties will negotiate in good faith.

23 d. **Requests to Continue a Settlement Conference:** Any request to
24 continue the Settlement Conference or request for relief from any of the
25 provisions or requirements of this Order must be sought by a **written ex**
26 **parte application.** The application must (1) be supported by a
27 declaration of counsel setting forth the reasons and justifications for
28 the relief requested, (2) confirm compliance with Civil Local Rule 26.1,

1 and (3) report the position of opposing counsel or any unrepresented
2 parties subject to the Order. Absent extraordinary circumstances,
3 requests for continuances will not be considered unless submitted in
4 writing no fewer than seven (7) days prior to the scheduled conference.

5 If the case is settled in its entirety before the scheduled date of
6 the conference, counsel and any unrepresented parties must still appear
7 in person, unless a written joint motion confirming the complete
8 settlement of the case is submitted no fewer than twenty-four (24) hours
9 before the scheduled conference.

10 IT IS SO ORDERED.

11 DATED: September 18, 2008

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14 BARBARA L. MAJOR
15 United States Magistrate Judge
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25 COPY TO:

26 HONORABLE JANIS L. SAMMARTINO
27 U.S. DISTRICT JUDGE

28 ALL COUNSEL